IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.993/2003

Mahaveer S/o Chhotulal
Versus
The State of Rajasthan

Date of Judgment :::: 13th April, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Arvind Kumar Gupta, with
Shri J.R. Bijrania and
Shri Virendra Singh, Counsel for accused-appellant
Shri Arun Sharma, P.P., for the State
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By the Court:-

Accused-appellant Mahaveer S/o Chhotulal has preferred this appeal against the judgment and order dated 30.6.2003, passed by the Special Judge, N.D.P.S. Cases, Gangapurcity, in Sessions Case No.8/2003, whereby he has been convicted and sentenced under Section 8/18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in brief, 'the NDPS Act') to 7 years rigorous imprisonment and a fine of Rs.10,000/-; in default of payment of fine, to further undergo two years additional rigorous imprisonment.

Briefly stated the facts of the case are that on 15.2.2002 the Station House Officer, G.R.P. Police

Station, Gangapurcity, Shri Mahesh Kumar, on the instructions of the Deputy Superintendent of Police, G.R.P., Kota, was on petrolling duty at the Railway Station, Gangapurcity. At about 12.30 at night, he saw and suspected one person in the Rest House of the Railway Station; there was one bag belonging to him and therefrom 500 gram opium was recovered. The licence was not shown by him, therefore, the case was registered in accordance with the law. The matter was investigated and challan was filed against the accused-appellant under Section 8/18 of the NDPS Act. The trial court framed the charge against the accused-appellant Mahaveer as well as co-accused Rambabu S/o Shyamlal for the offence under section 8/18 of the NDPS Act. The accused-appellants denied the charge and claimed to be tried.

The learned trial court, after considering the entire prosecution case, acquitted the co-accused Rambabu, but convicted and sentenced the accused-appellant as mentioned above.

The learned counsel for the appellant argued the case at length, but, during the course of arguments, he did not press the appeal on merits keeping in view the recovery of contraband from the possession of the accused, which was recovered vide

recovery-memo (Exhibit P-1) and the statement of PW-9 Mahesh Kumar, which was fully corroborated with the statements of PW-1 Bhawani Shankar and PW-2 Veer Vikram Singh, and contended that the accused-appellant has already remained in jail for about 4 years 21 days and the quantity of contraband was lesser than the commercial quantity and for that no minimum sentence is prescribed, therefore, looking to the quantity of contraband, the sentence of imprisonment awarded by the trial court, may be reduced to a period of imprisonment of 4 years and 21 days already undergone by the accused-appellant.

The learned Public Prosecutor has supported the judgment of the trial court. However, he does not dispute that the accused-appellant has already remained in jail for about 3 months and 8 days during the trial of the case and since the date of the judgment of the trial court i.e. 30.6.2003 he is in jail and has completed the sentence of about 3 years 9 months and 13 days, thus he has already remained in jail for about 4 years and 21 days.

I have considered the submissions of the learned counsel for the parties and minutely scanned the impugned judgment passed by the trial court.

Exhibit P-1 is the recovery-memo dated

15.2.2002 prepared by PW-9 Mahesh Kumar, S.H.O., GRP Police Station, Gangapurcity, in presence of Bhawani Shankar, Veer Vikram Singh, Omprakash and Ramanlal. Exhibit P-2, the site-plan, was prepared in the matter. The sample of contraband was taken, which was sent for chemical examination. The accused was arrested. As per the FSL Report (Exhibit P-27), dated 14.6.2002, the result of the examination of contraband was that - on chemical examination, the sample contained in each of the packet marked A-1 and M-1 gave positive tests for the presence of chief constituents of coagulated juice of opium poppy having 3.04% (Three point zero four percent) morphine and 2.18% (Two point one eight percent) morphine respectively.

PW-9 Mahesh Kumar has proved the recovery of contraband made from the accused and his statement is fully corroborated by the statements of PW-1 Bhawani Shankar and PW-2 Veer Vikram Singh. Although, PW-7 Omprakash and PW-8 another Mahesh Kumar were declared hostile by the prosecution, but recovery of contraband from appellant and recovery-memo, both, are fully proved from the statements of PW-9 Mahesh Kumar, PW-1 Bhawani Shankar and PW-2 Veer Vikram Singh, therefore, in my view, the learned trial court has rightly

convicted the accused-appellant Mahaveer for the above offence and the learned counsel for the appellant is right in not pressing the appeal on merits.

So far as the submission of the learned counsel for the accused-appellant for reduction of sentence of the accused-appellant is concerned, it is relevant to mention that vide Notification dated S.O./1055(E) dated 19.10.2001, the Central Government while exercising the powers conferred by Clause (viia) and (xxiiia) of Section 2 of the NDPS Act, issued a Notification whereby in Columns 5 and 6 of the Table the small quantity and commercial quantity have been specified. The opium is shown at Serial No.92 of the said Table. The small quantity of opium in Column No.5 is mentioned as 25 gram whereas commercial quantity is mentioned as 2.5 kilogram. The case relating to small quantity is punishable with maximum sentence of six months rigorous imprisonment, whereas cases, relating to commercial quantity or more, are punishable with an imprisonment which is not less than 10 years, but so far as the cases relating to quantity above the small and lesser than the commercial quantity are concerned, no minimum sentence of imprisonment is prescribed and the maximum sentence prescribed is 10 years rigorous imprisonment and fine. In the present case, the

contraband i.e. opium weighing 500 gram was recovered and the appellant has already remained in custody for about 4 years and 21 days, therefore, I think it fit and proper that ends of justice will meet in case the sentence of imprisonment of the accused-appellant is reduced to a period of imprisonment of 4 years and 21 days, already undergone by him.

Consequently, the appeal is partly allowed. The conviction of accused-appellant under Section 8/18 of the NDPS Act is maintained, but his sentence awarded by the trial court is reduced to a period of imprisonment of 4 years and 21 days, already undergone by him till now, and fine of Rs.2000/- (Rupees two thousand); in default of payment of fine, to further undergo 15 days additional rigorous imprisonment. Two months time is allowed to the appellant to deposit the amount of fine, if the same has not been deposited so far. In case of failure of the appellant in deposit of the amount of fine, the default clause will be complied with.

The appellant is in jail, therefore, he may be released forthwith, if his custody is not required in any other case.

(Narendra Kumar Jain) J.

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